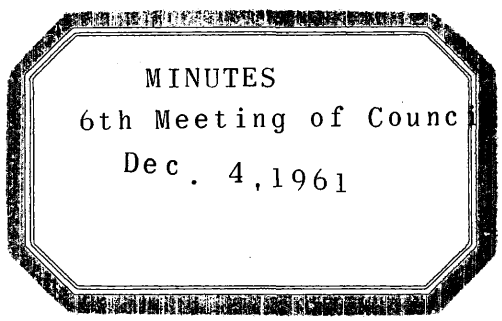
MINUTES
6th Meeting of Counci
Dec. 4, 1961

Council
E. Barrett Prettyman, *Chairman*
Max D. Paglin, *Vice Chairman*
Manuel F. Cohen
Walter Gellhorn
Joseph P. Healey
Everett Hutchinson
James M. Landis
John D. Lane
Earl Latham
Carl McGowan
Nathaniel L. Nathanson

Administrative Conference of the United States

Executive Secretary, WEBSTER P. MAXSON
Director, Office of Administrative Procedure
Department of Justice, Washington 25, D.C.

Summary of Principal Actions Taken at Sixth Meeting of the Council December 4, 1961

1. Approved form of Resolution relating to the Order of Business at the Second Plenary Session of the Conference to be held December 5, 1961.

2. Authorized the Committee on Internal Organization and Procedure to present to the Conference session (if the Committee voted to do so), recommendations with respect to S. 1734, as revised.

3. Voted to recommend April 3 and 4, 1962 as the dates for the Third Plenary Session of the Administrative Conference, and to schedule a Council meeting on April 2, 1962.

4. Authorized presentation to the Second Plenary Session of the Administrative Conference of a resolution providing for the establishment of a Conference Committee on Ethics to render advisory opinions under the President's Code of Ethics (Executive Order 10939), provided that White House clearance was first obtained.

MINUTES OF THE SIXTH MEETING OF THE COUNCIL OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
UNITED STATES COURTHOUSE, WASHINGTON, D. C.

Monday, December 4, 1961

MEMBERS OF THE COUNCIL

Judge E. Barrett Prettyman, Chairman
Mr. Max D. Paglin, Vice-Chairman
Mr. Manuel F. Cohen
Professor Walter Gellhorn
Mr. Joseph P. Healey
Mr. Everett Hutchinson
Mr. James M. Landis
Mr. John D. Lane
Professor Earl Latham
Mr. Carl McGowan
Professor Nathaniel L. Nathanson

Mr. Webster P. Maxson, Executive Secretary

Judge Prettyman called the meeting to order at 3:00 p.m., with all members of the Council present except Mr. McGowan and Mr. Lane. Mr. McGowan joined the meeting at 3:30 p.m.

Order of Business for the Second Plenary Session

Mr. Paglin presented a proposed resolution governing the order of business for the second plenary session of the Administrative Conference to be held on December 5, which provided, in substance, as follows:

1. Committee reports shall be presented first.

2. Committee recommendations shall then be considered.

3. One hour shall be allotted to the consideration of each committee recommendation, 30 minutes to be controlled by the committee chairman submitting the recommendation and 30 minutes for discussion from the floor, no speech from the floor to exceed five minutes in length. In the event floor discussion of committee recommendations is not completed, and the matter is not ready for vote at the end of one hour, the matter shall be deferred to the end of the prepared agenda for the session.

4. The luncheon recess will be from 12:30 p.m. to 1:45 p.m.

5. Adjournment (or recess until Wednesday, December 6) will be at 4:30 p.m.

6. The Chairman may entertain requests for unanimous consent to extend limitations on times herein stated.

The Council approved the proposed resolution for presentation to the Conference, after changing only the provision for the hour of adjournment from 4:30 p.m. to 5:00 p.m.

Recommendations Concerning S. 1734

As the second item of business, Judge Prettyman referred to the proposed agenda for the second plenary session of the Conference which had been prepared by the Executive Secretary and distributed to the Council, with particular reference to Item No. 8, entitled "Special Report from the Committee on Internal Organization and Procedure concerning the issues involved in S. 1734, as

revised." He directed attention particularly to the note under this item of the proposed agenda, explained that the note had been inserted at his direction, and reviewed briefly the reasons therefor. The note reads as follows:

> "Note: Recommendations concerning the several issues involved in this bill will be presented by the Committee for debate and vote at the next plenary session of the Conference."

At its fourth meeting, in September, the Council had set November 21 as the deadline for the submission of recommendations to be voted on at the December 5 session. This plan afforded the Executive Secretary one day before the Thanksgiving holiday, November 22, and one day thereafter, November 24, in which to put the recommendations and supporting reports in a form in which they might be considered, and to have them reproduced in quantity in order that the Council might consider them at its meeting in New York on Saturday, November 25, and in order that they might be ready for mailing to the Conference membership, including whatever revisions might result from Council consideration thereof, on Sunday, November 26. Thus Conference members would have in their hands for study, a full week in advance of the plenary session, all of the recommendations upon which they would be asked to vote.

By the deadline date, the Committee on Internal Organization and Procedure had submitted to the Executive Secretary only a report on S. 1734, dated November 15, 1961, without any specific recommendations upon which the Conference might vote.

In telephone conversations on November 21 between the Executive Secretary and the Committee Chairman and its Staff Director in Minnesota, it was learned that the Committee had not submitted any recommendations because it had understood that the Council, in this case, instead of the Committee, was to formulate the specific recommendations on S. 1734 at its November 25 meeting, and that the

Executive Secretary thereafter, presumably on Sunday, November 26, would have the Council's recommendations duplicated and mailed to the membership along with the recommendations for Conference consideration and vote which had been received on November 21. In these conversations, the Executive Secretary denied any such understanding, but nevertheless invited a proposed recommendation from the Committee for submission to the Council on November 25.

On November 22, 1961, the Chairman of the Committee on Internal Organization and Procedure submitted a document entitled "Recommendations Of Action In Respect To S. 1734, 87th Congress, 1st Session (1961) As Revised By the Bureau Of The Budget," dated November 21, 1961. On November 24, 1961, another document prepared by the Committee Staff Director, entitled "Resolution on S. 1734, As Revised By The Bureau Of The Budget" was submitted. Both documents were reproduced in quantity and referred by the Executive Secretary to the Council at its meeting in New York on November 25.

At that meeting, the Council did not examine the bill, the Committee's report, and related papers and formulate its own specific recommendations, as the Committee had expected it to. Nor did it approve for Conference consideration and vote either the "Recommendations Of Action" or the "Resolution" submitted by the Committee Chairman. However, because of a feeling that S. 1734 is an important piece of legislation and because of the urgent need for a Conference view on the bill, the Council voted to place the Committee report on the agenda of the plenary session, even though it contained no recommendations upon which the Conference could vote.

Accordingly, the Executive Secretary, after having furnished to all members of the Conference the specific recommendations upon which a vote would be taken, on November 29, 1961 had mailed to all members the Committee report on S. 1734 together with certain related documents,

under cover of a memorandum which advised that the Council had placed the matter on the agenda and that it would be presented at the plenary session for discussion only, at the same time giving notice that specific recommendations on the bill would be developed and voted upon by the Conference at the next plenary session in 1962.

Commissioner Cohen pointed out that although the resolution prepared by the Committee Staff Director had not been approved by the Committee because the time available had precluded its circulation among the Committee members, it was his opinion and that of the Committee Chairman that the resolution fairly represented the views of a majority of the Committee, as expressed in its last meeting. Therefore, he urged that the resolution be submitted to the Conference for vote. The resolution, in substance, would recommend that Congress enact "the provisions of the bill dealing with delegation of decision-making authority," and would authorize the Chairman to appoint a committee to consult with any committee of the Congress or the Bureau of the Budget, concerning S. 1734. He urged this course as a means of bringing before the plenary session, for debate, the general principles embodied in the bill.

Dean Landis explained his view that early action by the Conference with respect to S. 1734 is of extreme importance, and similarly urged that the matter be submitted for Conference vote, even if consideration had to be limited to the general principles involved, leaving more detailed provisions of the bill for consideration at the next session.

Professor Nathanson questioned whether the Council ought to approve presentation of the proposed resolution in the particular form in which it was presented without giving the Committee a full opportunity to review and discuss its precise language, particularly in view of the fact that the Committee already had acted on some of the principles involved in the bill, and had found at least one dissenting member of the Committee. He suggested that it might be more suitable for present purposes if the resolution merely

provided that the Committee or members of the Council could appear before Congressional committees to present their views on S. 1734, as revised.

Judge Prettyman expressed reluctance to having the Council set a precedent of requesting the Conference to consider complex and important matters, such as the Committee recommendations on S. 1734, under circumstances in which all pertinent documents had not previously been distributed to the Conference membership for advance study, in accordance with the procedures formulated by the Council in its organizational meetings.

Other members of the Council reiterated the view expressed at the November 25 meeting, that some debate or action on the revised S. 1734 at the December 5 session of the Conference was highly desirable, even if it related only to the general principles in the bill.

Professor Nathanson then moved that the Executive Secretary be directed to distribute to the Conference at the beginning of the December 5 session the memorandum dated November 21, 1961 from the Committee on Internal Organization and Procedure to the Council containing the Committee's recommendations of action in respect to S. 1734 as revised; and that the Chairman of that Committee be informed that if the Committee desires to present to the Conference a resolution proposing approval of the recommendations in the memorandum of November 21 (or such revision thereof as the Committee might be prepared to present), such resolution would be considered to be in order for debate and vote.

Objection was expressed that the provision relating to revision of the recommendations was too broadly stated and might be viewed as an abdication of the Council's function of reviewing committee recommendations prior to their presentation to the Conference. Thereupon Professor Nathanson revised his motion to strike therefrom the words "or such revision thereof as the Committee might be prepared to present" and to substitute the words "or such amendment as might incorporate the substance of the closing paragraph of the most recent committee report." [The "report" to which

Professor Nathanson's amendment refers is the proposed Resolution which Mr. Cohen had read earlier, the concluding paragraph of which reads "The Conference authorizes its Chairmen to appoint a committee of the Conference to be available for consultation with reference to the bill, S. 1734, as revised by the Budget Bureau, at the request of any committee of Congress or the Budget Bureau."].

Professor Nathanson's motion, as revised, was adopted by the Council.

Mr. Cohen left the meeting temporarily for the purpose of advising the Chairman of the Committee on Internal Organization and Procedure of the Council's action on this matter.

Committee on Style

In response to a request from the Chairman, Mr. Hutchinson stated that he would be prepared to present to the Conference session on December 5 a resolution to create a Conference Committee on Style as Item No. 11 on the agenda.

Circulation of Committee Papers

Professor Gellhorn agreed to present to the Conference Item No. 14 on the agenda soliciting the advice of the Conference as to whether its members wish to have committee working papers circulated generally to the membership of the Conference.

Date for the Next Meeting of the Conference

The Council voted to schedule a Council meeting on Monday, April 2, 1962, and to recommend that the third plenary session of the Conference be scheduled for Tuesday and Wednesday, April 3 and 4, 1962.

Procedure for Acknowledging Persons Representing Absent Members

Judge Prettyman stated that in calling the roll at the opening of the Conference session, he would request that only members present at the session should answer the

roll call and that he would then request persons who had been sent as observers for absent members to state their names and indicate what member they are representing.

Substitution of Mr. Oulahan for Commissioner Graham of the AEC

Judge Prettyman stated that Mr. Oulahan of the Atomic Energy Commission had advised him that the Commission wanted him to substitute at the December Conference session for Commissioner Graham, who could not attend the session. Judge Prettyman explained that under the Bylaws a substitution in membership could be made only on 30 days' prior notice. He stated, however, that he would be prepared to entertain a resolution from the Conference floor suspending the Bylaw provision, if prior to the session Mr. Oulahan presented a designation from the Atomic Energy Commission substituting his name for that of Commissioner Graham as a member of the Conference. The Council voiced no objection to this proposal.

Practice Manual

With reference to the proposal of the Committee on Information and Education to prepare a practice manual, Judge Prettyman explained that he had advised Chairman Henderson of that Committee that the proposal is feasible only if the work to be undertaken can be completed before the end of the Conference in 1962. Judge Prettyman stated that Chairman Henderson is checking with the Staff Director of the Committee to ascertain what work toward such a manual could be completed within that time.

Conference Advisory Committee on Ethics

Judge Prettyman stated that he had discussed with Mr. Myer Feldman, Deputy Special Counsel to the President, the proposal to establish a Committee on Ethics within the Conference with the function of rendering advisory opinions to the heads of Federal agencies with respect to questions arising under the Codes of Ethics established under

Executive Order 10939 of May 5, 1961. He suggested that such advisory opinions, without identification of the persons or agencies involved, could be published in the Federal Register as a guide to Federal personnel under the Executive order. The Council agreed that if approval was obtained from the White House, a resolution for the creation of such a Committee on Ethics could be presented to the Conference at its December 5 meeting. Mr. McGowan agreed to formulate such a resolution and present it to the Conference session on behalf of the Council if White House approval were received in time for such action.

Professor Kenneth Culp Davis

Professor Nathanson stated that he had contacted Professor Kenneth Culp Davis and indicated to him the Council's desire to engage him as a consultant to the Council. Professor Nathanson explained that he had spoken to Professor Davis only in a general way and received a cordial response, but that he did not specifically request Professor Davis to serve as a consultant since he understood that Judge Prettyman would write a letter to that effect. Judge Prettyman confirmed that he would write such a letter.

Conference Research Staff

Judge Prettyman advised the Council of the work of the 35 younger lawyers provided by the agencies to assist in committee research work. He emphasized the importance to the Conference of assuring adequate planning, direction, and supervision for the work to be performed by these lawyers, particularly the importance of making clear the nature of their assignments and its relation to the work of the Conference. He also suggested that when Mr. Bolton-Smith commences work for the Conference it might be advisable to assign him the function of coordinating the work of the young lawyers and keeping them informed of and interested in the progress of the Conference.

The Council meeting adjourned at 4:50 p.m.